Message

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Sent: 6/3/2021 9:10:25 PM
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Subject: OCSPP News for June 3, 2021

OCSPP Daily News Round-Up

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- Pittsburgh Injury Law News 06/02; PFAS Chemicals Caused Water Contamination and Birth Injuries, Plaintiffs Say

Pesticides

- Inside EPA 06/02; Industry Rebuts California Appeal To Reinstate Prop. 65 Glyphosate Warnings
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- JD Supra (Dickson Wright) 06/02; Final Minimum Risk Levels for PFAS: What Do They Mean?

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Wendy's, States Ditch Food Wrappers With 'Forever Chemicals'

Pat Rizzuto, Bloomberg Law

https://news.bloomberglaw.com/environment-and-energy/wendys-states-ditch-food-wrappers-with-forever-chemicals?usertype=External&bwid=00000179-94d0-d419-a379-

bdf7b81c0001&qid=7117904&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_nl%3A2&source=newsletter&item=headline®ion=featured-story&access-ticket=eyJjdHh0IjoiTkVWRSIsImlkIjoiMDAwMDAxNzktOTRkMC1kNDE5LWEzNzktYmRmN2I4MWMwMDAxIiwic2lnIjoiZDVmVXBvcUwycGtNMyt3eGovM2FKZHJONXBzPSIsInRpbWUiOiIxNjIyNzE4OTI4IiwidXVpZCI6IitlaUtuN0pNZXRHTGRINDdLN1pEVWc9PXZLZHRQc0M4NTFCVXladHcyQmx2TGc9PSIsInYiOiIxIn0%3D

- States, corporations nixing food packaging with PFAS
- Liability lawsuits about compostability emerging

Fast-food restaurants and grocery store chains are joining a growing number of states in pushing "forever chemicals" out of food packaging, despite a federal thumbs-up that allows PFAS to touch what people eat.

Burger wrappings, salad bowls, pet food bags, and other packaging use some of the chemicals in the PFAS family to repel oil and grease. Companies also use per- and polyfluoroalkyl substances to protect food-processing equipment from heat and other stressors.

But some PFAS don't break down in the environment, and their links to health problems ranging from high cholesterol to cancer have triggered alarms across the U.S. and abroad.

Denmark, Maine, New York, Washington, and Vermont already banned PFAS from food packaging, while Minnesota, New York, and Connecticut have purchasing policies barring packaging with the chemicals. California, Minnesota, and Maryland are considering phase-out laws and/or developing regulations.

McDonald's Corp., Wendy's Co., and Whole Foods Market, Inc., are among at least 15 companies that have announced policies in recent years to phase PFAS out of packaging they use or sell.

The more states and corporations ban PFAS from food packaging, the more that practice will become the industry standard and expectation, said Emily M. Lamond, an attorney with Cole Schotz P.C.'s environmental department.

It's "death by a thousand cuts," she said. "Each action creates public attention, creates that much more pressure and attention."

Adding Pressure

Eight nonprofits added more pressure on Thursday. They petitioned the Food and Drug Administration to ban all PFAS, which accumulate in the body, from packaging and other materials that touch food.

Rep. Debbie Dingell (D-Mich.) also plans to reintroduce legislation requiring the FDA to ban any use of PFAS in food packaging.

"Congress never intended persistent, toxic chemicals to be allowed in food or packaging," she told Bloomberg Law in an email.

Meanwhile, an emerging area of consumer lawsuits over PFAS in packaging are adding more incentive for businesses to look for alternatives, which state and international agencies are identifying. Wax, silicone, denser paper, and clay-based coatings are among the possible PFAS substitutes for some products, these agencies have said.

All these actions and a basic argument are aiding change, said Mike Schade, who directs the Mind the Store campaign, which has pushed companies for years to phase out hazardous chemicals including PFAS from food

packaging.

"Food packaging is used once," he said. "You go to Burger King, buy a Whopper and fries, and throw away the packaging after scarfing them down. Yet the chemicals can last forever in the environment."

Corporate Policies Growing
Chipotle Mexican Grill, Inc.; Office Depot, LLC; and Koninklijke Ahold Delhaize NV, which owns grocery stores and food delivery services like Food Lion, the Giant Co., and Fresh Direct, are among more than a dozen companies with some type of PFAS in food packaging exclusion policy confirmed by Bloomberg Law.

Chipotle has eliminated PFAS from bowls used in the U.S. and Canada, with bowls in Europe to be targeted this quarter, according to a recent statement.

"Production is underway to phase out PFAS from other packaging items by the end of this year," it said.

Wendy's in April announced its goal of removing PFAS from to-go bags, sandwich wraps, fry cartons, and other "consumer-facing" packaging in the U.S. and Canada by the end of the year. And McDonald's, which excluded some PFAS from food packaging in 2008, is working to remove all added fluorinated compounds from packaging used globally by 2025.

More corporations need to step up, said José Bravo, coordinator for the Campaign for Healthier Solutions. The group wants dollar-type store chains, which often serve as a de facto grocery store in low income...

US company petitions FDA to strengthen controls on benzene in sunscreens
Julia John, Chemical Watch
https://chemicalwatch.com/275133/us-company-petitions-fda-to-strengthen-controls-on-benzene-in-sunscreens

Independent laboratory Valisure has petitioned the US FDA to better control benzene in drugs and cosmetics, after the company's testing indicated several dozen sunscreen and after-sun care products were contaminated with the carcinogen (see box).

Benzene serves as a solvent in the chemical and pharmaceutical sectors, and it could appear in trace amounts in gasoline, glues, adhesives, paint strippers, cleaning products and cigarette smoke. According to the Personal Care Products Council (PCPC), although the substance is not intentionally added to sunscreens, producers know it may be present in very low amounts.

The FDA classifies benzene as a class 1 solvent that "should not be employed in the manufacture of drug substances, excipients and drug products because of [its] unacceptable toxicity." However, agency guidance allows a maximum benzene concentration of 2 parts per million (ppm) in pharmaceuticals if the substance's "use is unavoidable in order to produce a drug product with a significant therapeutic advance". The agency does not define a limit for the substance's presence as a contaminant.

In the 25 May citizen petition, Valisure requested the FDA Commissioner to take 13 actions, including:

recall sunscreen and after-sun items containing benzene;
study the substance's occurrence in sunscreens;
possibly address benzene under a future effort to reconsider the 2019 proposed sunscreen rule;
set permissible benzene contamination levels, or potentially state there is no tolerable level;
specify allowed daily exposure; and
update cosmetics regulation and guidance to restrict this and other hazardous pollutants.

Valisure testing
Valisure scrutinised 294 batches of chemical and mineral-based sprays, gels and lotions from 69 brands purchased through big retailers. The investigation revealed that certain samples from 14 sunscreen and after-sun products from four brands included roughly 3 to 6ppm of benzene — up to three times the FDA's limit. Twenty-six batches had between 0.1 and 1.99ppm, and 38 had smaller quantities, according to the company.

Since the compound occurred in batches rather than across the same products, it likely stemmed from contamination, not deliberate addition, Valisure said. "Considering the long history and widespread use of these products", they do not seem to constitute a 'significant therapeutic advance' falling under the FDA's pharmaceuticals guidance, the business said. "Therefore, any significant detection of benzene should be deemed unacceptable".

David Light, Valisure's founder and CEO, referred to contamination by the substance as "a pervasive problem throughout the supply chain". The company – which bills itself as "the industry leader in proactively identifying pervasive drug quality problems" to help protect patients – was "surprised" by the lack of well-defined limits, he said.

"We hope that FDA acts quickly to address this contamination given that we are entering the summer season," he said.

Response to petition
The FDA told Chemical Watch the agency is looking at the petition and "will continue to monitor the sunscreen marketplace and manufacturing efforts to help ensure the availability of safe sunscreens for US consumers."

The agency said it "reminds manufacturers, distributors, repackagers and importers they are responsible for the quality of their products and urges manufacturers to test their ingredients to ensure they meet specifications and are free from harmful contamination".

According to Tod Cooperman, ConsumerLab.com's president and founder, the agency "should take the Valisure findings very seriously" since people frequently apply sunscreens and after-sun products all over the skin. "Regulation would push manufacturers to figure out where benzene is being introduced and stop it," he said.

Yale dermatology professor Christopher Bunick called Valisure's demands "appropriately measured". By exploring the contaminated items' supply chains and production processes, the...

Louisiana legislature passes bill to restrict PFAS-containing firefighting foams
N/A, Chemical Watch
https://chemicalwatch.com/275729/louisiana-legislature-passes-bill-to-restrict-pfas-containing-firefighting-foams

The Louisiana Senate has passed legislation to ban certain uses of firefighting foams with per- and polyfluoroalkyl substances (PFASs), likely becoming the next US state to address the chemical class in these products.

The bill (HB 389) cleared the Senate 32-0 on 2 June. If signed into law, it would prohibit the use of PFAS-containing class B firefighting foams in areas like testing and training, starting from 1 January 2022. The restriction would not extend to fire prevention, emergency firefighting, manufacture, sale or distribution activities.

Once the bill reaches his desk, Governor John Bel Edwards will have around 10 days to take action before it is automatically incorporated into the state statute. If he vetoes the measure, which also passed the House unanimously, the legislature could override the governor.

Multiple US states have approved laws restricting PFASs in firefighting foams, such as Arkansas, California, Colorado, Michigan, Minnesota, New Hampshire, West Virginia and Wisconsin. Illinois, Iowa, Nevada and Texas are considering similar measures, according to Chemical Watch's legislation tracker.

States also continue to examine or adopt prohibitions on these compounds in food packaging and other products. They include Arizona, California, Connecticut, Iowa, Maine, Maryland, New York, North Carolina, Oregon, Vermont, Virginia and Washington.

Push to curb cancer-causing ethylene oxide intensifies

Sean Reilly, E&E News

https://www.eenews.net/eedaily/stories/1063733967/feed

New legislation from two Illinois senators would give EPA six months to tighten emission standards for a cancer-causing pollutant that's been a repeated trigger for public alarm and lawsuits.

The bill, S. 1903, introduced last week by Senate Majority Whip Dick Durbin (D-Ill.) and Sen. Tammy Duckworth (D-Ill.), would require EPA to set standards for ethylene oxide factoring in 2016 findings showing that long-term exposure to the toxic gas posed a much higher cancer risk than previously thought. Once the new standards are in place, EPA would have to publicly disclose any violations within 30 days or else face an investigation by the agency's inspector general.

"Our bill makes a straightforward and long overdue change to ethylene oxide emissions standards," Durbin said in a statement. "There's no excuse to delay any longer."

Ethylene oxide, classified as a hazardous air pollutant by the Clean Air Act, is used both to sterilize medical equipment and to make other chemicals that find their way into products like carpet, plastics and cosmetics, according to the agency. The Chicago area, home to sterilization plants that use the gas, became the scene of public protests after EPA's view of ethylene oxide's dangers became widely known in 2018. Hundreds of lawsuits have been filed against the owners of one of those plants, which has since closed, the Chicago Tribune reported last year.

Durbin's new bill expands on S. 458, a measure introduced in 2019 that never made it out of the Senate Environment and Public Works Committee. The revised legislation comes two months after an EPA inspector general's report found that the Trump administration appointees slowed the release of information about the potential risks to residents around Chicago (E&E News PM, April 15).

In a related report issued last month, the IG, Sean O'Donnell, also urged EPA to conduct fresh reviews of the standards for various industrial sources of ethylene oxide in light of the 2016 assessment (Greenwire, May 6). In a response attached to the report, a Biden administration appointee balked at conducting the reviews along the lines sought by O'Donnell, who deemed the bulk of his office's recommendations unresolved.

The House companion bill to Durbin's measure, H.R. 3631, was introduced last Friday by Rep. Brad Schneider (D-Ill.) and co-sponsored by Rep. Jody Hice (R-Ga.). In the 116th Congress, the two men co-chaired the House Ethylene Oxide Task Force, created in 2019 to press EPA to do more to regulate ethylene oxide; their bill has been referred to the House Energy and Commerce Committee.

Groups press FDA to ban PFAS in food packaging

Ariel Wittenberg, E&E News

https://www.eenews.net/greenwire/2021/06/03/stories/1063734095?utm_campaign=edition&utm_medium=email&utm_source=eenews%3Agreenwire

Environmental health groups have filed a petition urging the Food and Drug Administration to ban all "forever chemicals" in food packaging, saying the agency has bungled its handling of specific compounds.

"They have taken half steps and haven't followed through, but now is the time to really address this issue in the big picture instead of making assumptions that may not be grounded in science," said the Environmental Defense Fund's chemicals policy director, Tom Neltner.

The petition is largely motivated by documents recently released to EDF under the Freedom of Information Act showing FDA's communications with manufacturers of per- and polyfluorinated substances (PFAS).

PFAS, also known as forever chemicals, are a class of almost 5,000 toxic substances. Since the 1960s, FDA has issued approvals for multiple types of PFAS in food packaging products like fast-food wrappers, pizza boxes and microwave popcorn bags. FDA has also approved their use in nonstick cookware and as processing aides to reduce buildup on food manufacturing equipment.

The most well-studied compounds are known as "long-chain" PFAS because they contain more than seven carbon atoms. Many of those long-chain compounds have been linked to negative health effects like affecting the development of fetuses during pregnancy, liver damage and cancer. They have also been found to remain in peoples' bodies for extended periods of time, making their health effects more potent. After those concerns came to light, FDA in 2016 rescinded its approval for long-chain PFAS in food packaging.

At the time, the agency maintained approvals for the use of "short-chain" PFAS, which the industry claims are safer because they contain fewer carbon atoms.

Now, with new evidence emerging linking some of those short-chain PFAS to the same health concerns found in long-chain PFAS, EDF and other groups say FDA is reacting too slowly.

Take the case of one PFAS called 6:2 FTOH, which FDA approved for use in food packaging in 2010. At the time, the chemical's manufacturers — Daikin and DuPont — told FDA the chemical was less likely to accumulate in the human body and was not linked to any negative health effects.

Two years later, in a discovery first reported by The Guardian, FDA found that Daikin and DuPont hadn't disclosed studies showing that the compound actually is toxic to the liver and kidneys.

FDA conducted its own review of the science for 6:2 FTOH and also found the chemical remains in the body for long periods of time. That's problematic for FDA because the formulas used by the agency to calculate whether chemicals are safe for food packaging assume that they do not remain in bodies for very long.

So in October 2019, documents show, FDA wrote PFAS manufacturers confronting them with evidence that 6:2 FTOH bioaccumulates and had been linked to cancer, reproductive and developmental risks to people, saying that meant available toxicological information about the chemical was "inadequate to support" FDA's prior approval.

The agency also asked the companies to provide more information about the chemical's toxicity in rodents when its bioaccumulation was factored in. Such studies, FDA wrote, "are considered the minimum dataset needed to

address the safety concerns and data gaps."

Safety concerns about the compound were so urgent to FDA scientists that the agency rejected an offer from one manufacturer to conduct the requested studies within two years, according to a letter AGC Chemicals Americas Inc. wrote to FDA after meeting with the agency.

"FDA informed AGCCA that the agency was not prepared to wait for the company to complete the additional studies identified in the October 1, 2019, letter since, in FDA's view, they would take too long to complete," the letter says.

But FDA did accept a separate proposal from other companies to voluntarily phase out the use of 6:2 FTOH within five years. The released documents do not show any FDA effort to negotiate that timeline...

Court Tells EPA to Strengthen Lead Paint and Dust Standards
Lisa Whitley Coleman, EHS Daily Advisor
https://ehsdailyadvisor.blr.com/2021/06/court-tells-epa-to-strengthen-lead-paint-and-dust-standards/

The 9th Circuit Court of Appeals in San Francisco has again ruled that the EPA must do more in setting lead paint and dust standards.

In A Community Voice et al. v. U.S. Environmental Protection Agency, on May 14, 2021, the court again ordered the EPA back to the drawing board. It "ruled that the EPA violated the court's 2017 mandate to reevaluate hazard standards for lead in dust and paint that persist in millions of American homes, posing health risks, particularly to young children," according to Inside Climate News. "For separate reasons, the court also ordered the agency to update its definition of lead-contaminated soil.

"The EPA was found in violation for not strengthening its health standards for lead safety and instead considering such outside factors as feasibility and testing capabilities. In its ruling, the majority of appeals court judges also rebuked the agency for its glacial pace in setting standards over the last three decades."

Writing for the majority opinion, Judge Mary M. Schroeder wrote, "This case is part of what is becoming a lengthy, not very hopeful, saga of our nation's efforts to deal with the dangers of lead paint that remain in older housing."

Although led paint was banned from residential use in 1978, older homes built before then, primarily found in minority or low-income neighborhoods, often still have lead paint hazards. According to the Centers for Disease Control and Prevention (CDC), "Approximately 24 million housing units have significant lead-based paint hazards including deteriorated paint and lead-contaminated house dust. About 4 million of these are home to young children."

Young children often ingest lead paint chips because they taste sweet, or they put their hands in their mouths after touching lead paint dust.

"This can have catastrophic effects on health and development, as lead poisoning puts them at greater risk of attention deficit hyperactivity [disorder], stunted growth and brain damage," Inside Climate News cautions. "Lead poisoning has also been linked with a greater likelihood of dropping out of school, making less money over a lifetime and ending up in prison."

"The fact is, most homes have not been inspected for lead paint hazards," says David E. Jacobs, PhD, chief scientist for the National Center for Healthy Housing, a nonprofit organization whose mission is to reduce

health disparities caused by unsafe housing.

Congress passed the Residential Lead Paint Hazard Reduction Act in 1992 and charged the EPA with setting a hazard standard for lead in dust within 18 months. However, the Agency failed to set the first standard until 2001, 9 years later.

Later court rulings found the initial standards set by the EPA to be inadequate, although it wasn't enough to spur the Agency to act. In 2009, several organizations petitioned the EPA to strengthen the standards, and when the Agency still failed to act, organizations took the EPA to court.

The 9th Circuit issued a mandate for the EPA to act in 2017.

"Two years later, the EPA published its new rule, sometimes called the 10/100 standards," according to Inside Climate News. "It tightened the level of lead considered dangerous on floors, lowering it from 40 micrograms per square foot to 10 micrograms per square foot. For windowsills, it lowered the standard from 250 micrograms per square foot to 100 micrograms per square foot. Window frames painted with lead play an outsized role in exposure because the friction caused by opening and closing them creates and spreads contaminated dust."

Environmentalists and other public health groups still felt the standards were too lax for lead dust, so they successfully sued the Agency again.

"The EPA had argued that setting standards based solely on the science—which says there is no safe amount of lead in the body—was not feasible because the agency could not mitigate all lead dangers on its own," Inside...

Petitioners Fight EPA Request To Remand Methylene Chloride Evaluation
David LaRoss, Inside EPA
https://insideepa.com/daily-news/petitioners-fight-epa-request-remand-methylene-chloride-evaluation

Environmentalists and states are opposing EPA's bid for a judicial remand of its TSCA evaluation of methylene chloride, saying the agency's proposal to rework parts of the document sidesteps key issues they have raised in their legal challenges and would avert a potential precedent that could shape pending litigation over other assessments.

In a pair of June 1 filings, the two coalitions suing over EPA's 2020 Toxic Substances Control Act (TSCA) evaluation of methylene chloride -- the first evaluation of an existing chemical the agency completed since the law's overhaul and the first to be litigated -- each asked the U.S. Court of Appeals for the 9th Circuit to deny the remand.

Even though the agency is seeking to tighten the evaluation, both sets of petitioners say its plan does not go far enough to warrant halting the suit because it is proposing to reconsider only some of the issues they have raised in court and could still decide to maintain Trump-era positions they say are unlawful.

"EPA does not propose changing its approach to any issue it asks to reconsider, does not propose reconsidering other issues Petitioners have presented, does not admit that it erred, and does not ask the Court to vacate its no-unreasonable-risk determinations. The incomplete and noncommittal nature of EPA's request makes it almost certain that if remand is granted, Petitioners will be forced to return to the Court years from now to renew unresolved claims and repeat their arguments about EPA's TSCA responsibilities," reads the opposition filing from environmental, labor and other citizen groups challenging the evaluation.

Rather, they say, the 9th Circuit should use the case to hand down a first-time decision on whether several of the Trump EPA's approaches to evaluating risks from existing chemicals under the 2016 TSCA reforms were lawful -- many of which it used in all 10 of the risk evaluations it completed, meaning the precedent from a methylene chloride decision could quickly narrow any court challenges to the remaining nine.

"[T]his case presents an important opportunity to address first-impression, statutory-interpretation questions about EPA's responsibilities under the 2016 TSCA amendments, before more lawsuits are filed that present such questions," the groups argue.

And the petitioners say that if the 9th Circuit does agree to a remand over their objections, it should impose strict conditions on EPA, including vacating its findings that six uses of the solvent pose no unreasonable risks -- which they note could become a basis to preempt state or local restrictions on those uses -- and setting deadlines for the agency to finish its work.

"Vacatur would also help ensure that EPA reconsiders the contested risk determinations with an open mind, and that bureaucratic inertia does not get in the way of further action to protect the people exposed to methylene chloride through those conditions of use," the environmentalists write.

The agency's May 13 request for a voluntary remand in the methylene chloride litigation marked its first formal step toward revising at least some elements of the 10 Trump-era TSCA risk evaluations. In particular, it says EPA "intends to propose" switching from determining whether individual uses present unreasonable risks and to a single, "binary" determination for the chemical as a whole.

It has also pledged to "reconsider" Trump-era positions on worker protections, risks to environmental justice communities, and whether to consider general-population exposures such as releases to ambient air -- though it is not promising to propose specific changes in those areas.

The June 1 briefs come just days after EPA sought remand in a second Trump-era TSCA evaluation suit, over the cluster of flame retardant chemicals known as hexabromocyclododecane (HBCD). The agency's HBCD remand request is broadly similar to its remand motion in the methylene chloride cases, and could attract similar opposition from its...

ADAO Seeks Broad EPA Asbestos Regulation Despite Split Evaluations

Diana DiGangi, Inside TSCA

https://insideepa.com/tsca-news/adao-seeks-broad-epa-asbestos-regulation-despite-split-evaluations

The Asbestos Disease Awareness Organization (ADAO) is asking EPA to take a holistic approach to regulating asbestos exposures to better protect environmental justice (EJ) communities even though it has split its risk evaluation between current and legacy uses, arguing that any rule based on one study alone would be "inadequate."

During EPA's June 1 EJ consultation on its upcoming asbestos and pigment violet 29 (PV29) risk management rules, ADAO counsel and former agency official Bob Sussman warned against regulating asbestos based only on the findings of its "part 1" evaluation that dealt solely with ongoing uses of chrysotile fibers, rather than considering how those exposures could overlap with discontinued "legacy" uses that will be the subject of a "part 2" review.

"[The EPA] must recognize that persons exposed to the conditions of use addressed in Part 1 often are exposed to legacy asbestos as well, resulting in greater risks than if each pathway of exposure were assessed separately," Sussman said. "To make risk management decisions solely on the basis of the Part 1 conditions of use will

therefore result in inadequate protection for some subpopulations."

Though they are advocating for EPA to take a tough approach to asbestos in its Toxic Substances Control Act (TSCA) rulemaking, both Sussman and Reinstein recently told Inside TSCA that they see Congress as the "best path" to a full ban on the substance.

"We're going to be cheerleaders for what EPA does, and we hope that they can do a lot, but I think it would be a mistake on our part or on the part of Congress to sit back over the next couple of years and wait for EPA to solve the problem, because there's a good chance that won't happen," Sussman said.

Under TSCA, EPA must evaluate risks posed by existing chemicals and then craft rules to limit any "unreasonable risks" it identifies, within two years of completing the evaluation.

But the two-part nature of the asbestos evaluation promises to complicate that timeline, as the agency's risk management rule governing current conditions of use is due in late 2022 but its internal strategic plan says the evaluation of legacy uses is targeted for 2024.

The legacy evaluation will include risks of exposure to asbestos that has already gone through industrial use, such as from the demolition of buildings that used it for insulation.

"Exposure to legacy asbestos is widespread but may well be elevated in minority and lower-income communities, where older asbestos-containing buildings may be more common, more residents may be employed in building maintenance and construction occupations with higher asbestos exposure and asbestos-containing debris from demolished or abandoned buildings may be more prevalent," Sussman said in his prepared remarks.

He also noted that residents in EJ communities also face increased risk of complications from asbestos like lung cancer and mesothelioma due to additional pollution and higher rates of smoking, potentially raising the likelihood of asbestos disease in those communities even without higher exposures to asbestos itself.

Similarly, ADAO co-founder Linda Reinstein argued in her prepared remarks that even though there are few products manufactured today with chrysotile asbestos, people can still face exposures from aftermarket use or repair of those items -- for instance "do-it-yourself mechanics" who could be exposed to asbestos from cars' brake pads while doing repair work.

"We've seen this over and over again for decades, which is why ADAO urges EPA to move swiftly to prohibit asbestos imports and use," Reinstein said.

Susceptible Subpopulations

Sussman also argued that EPA failed to properly consider "potentially exposed or susceptible subpopulations" in its evaluation of current uses of chrysotile fibers despite TSCA's mandate to limit harms to those populations specifically.

He added that a "robust" analysis would have highlighted risk factors of particular concern to EJ...

Maryland Sets PFAS Bans For 2025 In Latest Step Toward State Use Limits
David LaRoss, Inside TSCA
https://insideepa.com/tsca-news/maryland-sets-pfas-bans-2025-latest-step-toward-state-use-limits

Maryland has enacted a ban on certain per- and polyfluoroalkyl substances (PFAS), formaldehyde and other chemicals in several categories of products just as its 2020 law limiting use of PFAS and other flame retardants takes effect, adding to the wave of states readying restrictions on perfluorinated substances in the absence of federal rules.

The Old Line State's H.B. 643 became law without Gov. Larry Hogan's (R) signature on May 30, as one of dozens of bills the Democratic legislature approved in its 2021 session but which Hogan declined to sign or veto.

When it takes effect on Jan. 1, 2025, the law will ban "a person from knowingly manufacturing, selling, delivering, holding, or offering for sale in the State a cosmetic product that contains" any of 13 listed PFAS "and their salts," along with 11 other chemicals including mercury, formaldehyde and two phthalates: dibutyl phthalate and diethylhexyl phthalate, both of which EPA is evaluating under the Toxic Substances Control Act (TSCA).

It is just one of a host of recent state-level bills targeting PFAS uses, including Vermont's landmark ban on all perfluorinated chemicals in several categories of products such as carpets, food packaging and ski wax. Environmentalists and Democrats have pushed such legislation in the absence of federal limits on PFAS, either under TSCA or through congressional lawmaking.

While Maryland's new law falls short of the sweeping mandate set in Vermont earlier this year, it closely tracks a 2020 California law that restricts the same list of target chemicals and also takes effect on the first day of 2025 -- an approach that a staffer in the state legislature said will help industry comply.

"These are companies that sell products all over the country, or all over the world" and would face steep hurdles to adjust to state policies that set contradictory limits on chemicals in their products, or used different implementation timelines, the source says.

Such concerns have driven industry opposition to several state-level PFAS actions including Vermont's law; most prominently, the American Chemistry Council (ACC) has argued that the ban's 2023 compliance date conflicts with a voluntary phaseout of PFAS from food packaging by 2024 that is being led by the Food and Drug Administration (FDA).

"We support this rigorous FDA review process and believe this Vermont legislation is unnecessary and undermines public trust in the federal regulatory system," ACC said in a recent statement to Inside TSCA.

The Maryland law also diverges from other states' PFAS approaches because it targets just 12 chemicals within the group, such as the two most widely studied variants, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), rather than restricting perfluorinated substances as a class -- a model adopted in Vermont's bill and a proposed California rulemaking, among others.

ACC and other industry groups have opposed the class-based approach, arguing that it restricts use of a host of chemicals never proven to threaten human health or the environment. But environmentalists and their supporters say dealing with PFAS one-by-one or in subgroups would take decades because there are thousands of known perfluorinated substances.

However, manufacturers recently unveiled a report that claims the idea that there are thousands of PFAS in commerce is unfounded, and says there is a much smaller number of "relevant" chemicals in use, which would be easier for regulators to manage.

Flame Retardants

Just a day after H.B. 643's enactment, another Maryland PFAS law took effect, setting stringent new limits on use of a host of chemical flame retardants in "any juvenile product, mattress, upholstered furniture, or reupholstered furniture." That statute passed the legislature in 2020 but had set an effective date of June 1, 2021.

Unlike the narrowly targeted cosmetics bill, the 2020 law's definition of flame retardants is sweeping, including any substance...

West Virginia Backs Strict IRIS Vanadium Review, Setting Up Industry Clash
Maria Hegstad, Inside TSCA
https://insideepa.com/tsca-news/west-virginia-backs-strict-iris-vanadium-review-setting-industry-clash

West Virginia's environmental agency is urging EPA to take a conservative approach in its Integrated Risk Information System (IRIS) assessment of ingestion risks from vanadium, putting it at odds with several companies that oppose a broad assessment and say the agency should decline to make any risk findings for several forms of the metal.

In comments filed ahead of a May 26 deadline for input on the IRIS systematic review protocol for EPA's vanadium ingestion assessment, the West Virginia Department of Environmental Protection (WVDEP) and several industry entities take opposing views on how EPA should consider risks from forms of the element where it lacks data needed to craft a precise toxicity value, setting up what could be a fundamental question for the years-long process.

Specifically, the state says in its May 13 comments. that for any compound or other variant of vanadium where EPA cannot estimate a specific toxicity value, the agency should use the most stringent figure it develops for any of the "species" -- effectively assuming that any poorly-studied form of vanadium is as toxic as the most potent version known.

"WVDEP recommends that these toxicity values for specific oxidation states and species be used when such information is known. However, the overall toxicity values for vanadium to be used when species and oxidation states are unknown should be based on using the most conservative toxicity estimates from the various vanadium compounds as surrogates for vanadium in general," it writes.

The state argues that its approach "would be protective of human receptors in the absence of knowledge of speciation and oxidation states, and those parties who challenge this determination can assess the species and oxidation states as an option."

Further, it says, using a conservative value for unknown species of vanadium would lighten the burden on regulators to identify each variant that might be present at a contaminated site under the brownfields or Superfund programs, which it says would be difficult to do accurately due to technical limitations, and could strain regulators' resources.

"WVDEP also has concerns about the limited technical and financial ability to measure the relative proportions of the various vanadium species and oxidation states at Brownfield and Voluntary Remediation Program sites given the ubiquitous nature of this metal," the state says.

But industry groups that work with vanadium used their comments to argue that EPA should not address what they see as marginal forms of vanadium at all, and instead narrow the assessment to those species deemed relevant to ingestion risks specifically.

"[T]he IRIS program has not identified the precise form(s) of vanadium to which humans are exposed through drinking water. This is basic information that is needed to properly inform and direct the IRIS review," the Vanadium Producers & Reclaimers Association (VPRA) states in its May 26 comments.

'Virtually Unprecedented Scope'

The trade group, which represents the U.S. vanadium industry, argues that the current scope of IRIS' work is much broader than almost any prior assessment and that the agency should instead limit it to only certain species, because "[n]ot all vanadium compounds will be relevant to a hazard identification analysis related to oral exposures."

"The IRIS Program is assessing 23 separate species of inorganic vanadium with four possible oxidation states . . . and nine charges, including anions and cations . . . with additional sources of vanadium in food yet to be identified. This is a virtually unprecedented scope for an IRIS review," it says.

The trade group notes that when EPA's Office of Water (OW) directed drinking water systems to test for vanadium in its third Unregulated Contaminant Monitoring Rule, it used a method that measured total vanadium rather than identifying particular species or compounds, leaving the agency without information on which variants are present at what...

PFAS Chemicals Caused Water Contamination and Birth Injuries, Plaintiffs Say
Eric T. Chaffin, Pittsburgh Injury Law News
https://pittsburgh.legalexaminer.com/legal/pfas-chemicals-caused-water-contamination-and-birth-injuries-plaintiffs-say/

Two plaintiffs recently filed new toxic chemical lawsuits against manufacturers of products containing per- and polyfluoroalkyl substances (PFAS). These manufacturers include 3M Company, Chemguard Inc., and more.

The plaintiffs claim that the PFAS products caused water contamination and birth injuries, and seek to hold the companies liable for damages.

Water District Blames Firefighting Foams for Contamination of Wells
The first plaintiff is the Pico Water District. It owns and operates a water system providing drinking water to residents and businesses in the city of Pico Rivera, California. The plaintiff seeks to recover the substantial costs necessary to protect the public and restore certain of its water supply wells that were contaminated with per- and polyfluoroalkyl substances (PFAS).

PFAS are toxic chemicals present in firefighting foams that once released into the environment, do not degrade and persist to pollute waterways. The plaintiff states that these compounds have impacted stormwater, surface water, and groundwater, and "now contaminate the water pumped from the plaintiff's water supply wells."

Firefighting foams—which contain PFAS—were used at fire training facilities, fire departments, and airports within and around the plaintiff's water district, such that those compounds traveled by water pathways toward the plaintiff's contaminated wells.

The defendants were aware that their products would be used, released, or disposed of near the vicinity of these wells, the plaintiff continues, yet failed to take precautions to protect the public. As a result, PFAS and/or their chemical precursors have been detected in the plaintiff's contaminated wells at levels exceeding California's regulatory advisories.

Plaintiff Blames Congenital Defects on Exposure to PFAS
The second plaintiff is a resident of New Jersey who suffers from several profound birth injuries including a congenital heart defect and brachial plexus injury with associated paralysis. She blames these injuries on her exposure to PFAS in the defendants' products.

The plaintiff resided in Pedrickton, New Jersey from about 1962 through 1981, and her parents also lived there for a year before her birth. She states that she was exposed to PFAS from the defendants' products through airborne dispersion, groundwater, surface water, domestic water supplies, soil contamination, and vapor intrusion in and around her neighborhood.

She believes that her exposure to these toxins during her fetal development contributed to her birth injuries. Solvay, a manufacturer of a PFAS compound called polyvinylidene fluoride (PVDF), released vast amounts of PFNA and other toxins into the air, soil, and water contaminating the site and off-site properties including the plaintiff's home, according to her complaint. The company also used sodium perfluorooctanoate (NaPFO) as a surfactant, which degrades into PFOA, another PFAS chemical.

The plaintiff points to other examples as well, including DuPont's facility located in Pennsville and Carneys Point Townships in New Jersey, which produced, used, and discharged into the environment PFAS chemicals that contaminated off-site properties including the plaintiff's home.

The defendants knew of the toxicity of these chemicals but failed to take the proper precautions. In 2018, the New Jersey Department of Environmental Protection (NJDEP) sampled 992 private wells and detected PFAS in many of them, including those sampled as part of an investigation of Solvay's facility.

Industry Rebuts California Appeal To Reinstate Prop. 65 Glyphosate Warnings
Curt Barry, Inside EPA
https://insideepa.com/daily-news/industry-rebuts-california-appeal-reinstate-prop-65-glyphosate-warnings?utm_source=dlvr.it&utm_medium=twitter

A coalition of agriculture industry groups and the maker of the herbicide Roundup are opposing California's efforts in a federal appellate court to reinstate Proposition 65 cancer warnings for glyphosate, arguing in part that the alternative warning language the state is proposing continues to violate companies' First Amendment rights.

"The [California] Attorney General's reliance on the Alternative Warning is misplaced because it adds qualifying language that is both irrelevant to the constitutional analysis and noncompliant with Proposition 65," states a May 12 answering brief filed by the agriculture industry groups and Bayer Corp. in National Association of Wheat Growers, et al. v. Rob Bonta in the U.S. Court of Appeals for the 9th Circuit.

Monsanto Co., the long-time manufacturer of Roundup and glyphosate, was acquired by Bayer Corp. in 2018.

The answer responds to California's Feb. 12 opening brief that urges the court to reverse the landmark lower court order blocking the state from requiring companies to provide Prop. 65 cancer warning labels on products containing glyphosate, the active ingredient in many herbicides, because it violated their First Amendment rights.

California AG Rob Bonta (D) is arguing in part that disclosure requirements for commercial speech are subject to reduced scrutiny under the First Amendment, and that the AG's proposed alternative warning for glyphosate complies with relevant case law.

The state is appealing the June 2020 ruling by Senior Judge William Shubb of the U.S. District Court for the Eastern District of California, who held that even though the International Agency for Research on Cancer (IARC) has found that glyphosate is a "probable carcinogen," the state's proposed Prop. 65 label that glyphosate is "known to the state of California to cause cancer" is misleading, thereby violating companies' First Amendment rights.

Experts have said the case could set an important precedent as industry groups are increasingly turning to First Amendment defenses to challenge state and local environmental, health and safety warning requirements. As such, the decision could bolster industry efforts to challenge other Prop. 65 warning labels in cases where the science is contested.

California argues in part that companies can employ more flexible warning language offered by the AG to comply with Prop. 65.

"The district court's conclusion that there could be no warning that complied with the statute and with the First Amendment, which led the court to enjoin all enforcement, was in error," the state's Feb. 12 opening brief states. The AG's "proposed warning not only complies with Supreme Court and Ninth Circuit case law, but also advances one of the core purposes of the First Amendment, as well as of Proposition 65 -- to foster the dissemination of accurate information that, in this case, serves to protect public health and safety."

But attorneys representing the industry groups argue that the AG has already conceded that what California law requires is a "clear and reasonable" warning that a chemical is "'known to the state to cause cancer' or 'words to that effect,'" according to their May 12 answering brief.

"And it is that message -- the speech that state law compels; not whatever additional explanatory statements state law might allow -- that is the proper focus of the First Amendment analysis," the brief adds.

Alternative Warning

In addition, the state's alternative warning "is not actually an available option because -- under controlling California precedent and per the Attorney General's own regulations -- Proposition 65 forbids the addition of any language that would undermine the certitude of the core required warning," the industry lawyers contend.

"For both of these reasons, the district court's judgment can and should be affirmed without any need for this Court to consider whether compelling the Alternative Warning also would violate the First Amendment," they add...

France sees no easy fix for sugar beet disease without neonicotinoids

Sybille de La Hamaide, Reuters

https://www.reuters.com/article/france-pesticides/france-sees-no-easy-fix-for-sugar-beet-disease-without-neonicotinoids-idUSL5N2NK449

PARIS (Reuters) - None of the alternatives to neonicotinoids for protecting sugar beet crops works well enough on its own, France's health agency ANSES said on Wednesday, as the country looks for ways to do without the chemical seen as harmful to bees.

France suspended its ban on the use of neonicotinoids on sugar beet crops until 2023 at the latest to help farmers and sugar makers who saw a slump in output after virus yellows spread by aphids ravaged fields across the country.

France is the European Union's largest sugar beet grower and is home to some of the bloc's largest sugar producers including Tereos and Cristal Union.

ANSES said it had identified four short-term solutions to replacing neonicotinoids. These comprise two conventional plant protection products with insecticidal properties, along with two farming techniques - mulching and organic fertilization - in cultivated plots to reduce aphid populations.

Among longer-term solutions, it cited synthetic plant protection products of natural origin; microorganisms; predatory insects or parasitoids who lay their eggs inside aphids; plant and mineral oils that provide physical protection for beets; and cultivation methods that combine growing beet with other plants.

"Most of the alternative solutions considered to be substitutable for neonicotinoids show correct but insufficient effectiveness, when used alone, to reduce the levels of damage to an acceptable economic threshold," ANSES said in an opinion published on Wednesday.

Neonicotinoids have been banned for use on most crops in the European Union as part of efforts to stem a decline in bee numbers.

Final Minimum Risk Levels for PFAS: What Do They Mean?

Madeline Fleisher, JD Supra (Dickson Wright)

https://www.jdsupra.com/legalnews/final-minimum-risk-levels-for-pfas-what-4076608/

In May 2021, the federal Agency for Toxic Substances and Disease Registry (ATSDR) finalized a report containing toxicological profiles and associated Minimal Risk Levels (MRLs) for several perfluoroalkyls (PFAS), a family of chemicals marked by their persistence in the environment, bioaccumulation in human and animal tissue, and toxicity at extremely low levels (in the parts per trillion).[1] You may have seen PFAS flagged as contaminants of concern at sites across the country or seen the film "Dark Waters" about PFAS toxic tort litigation. Whatever the context, you probably know that PFAS regulation and liability issues are evolving at a rapid pace. So what does ATSDR's new report mean going forward?

Bottom line: this report sets the stage for what is likely to be a contentious battle regarding PFAS clean-up levels in the years ahead. Although the general potential for harmful effects from PFAS was identified several decades ago, definitive guidance on valid screening and cleanup levels for specific PFAS chemicals has lagged further behind as the science around PFAS toxicity and testing methodologies has developed. Prior to the ATSDR report, the U.S. Environmental Protection Agency (U.S. E.P.A.) had set a non-binding health advisory level of 70 parts per trillion (ppt) combined for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) for lifetime chronic exposure and also issued a December 2019 interim recommendation for a 40 ppt combined PFOA/PFOS screening level for federal cleanup programs (leaving 70 ppt as a preliminary remediation goal). U.S. E.P.A. has yet to designate any PFAS chemical as a hazardous substance for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or a hazardous waste for purposes of Resource Conservation and Recovery Act (RCRA).[2]

In the absence of binding federal standards, state environmental regulators have followed various approaches to monitoring and responding to PFAS. Many states have conducted testing of major drinking water sources for PFAS, either on their own initiative or under U.S. E.P.A.'s Unregulated Contaminant Monitoring Regulation 3 requiring sampling under the Safe Drinking Water Act, but sampling of private wells and smaller non-community systems has been sporadic. Some states have developed screening and action levels lower than U.S. E.P.A.'s, while others have relied on the federal 70 ppt health advisory level as a credible number to guide agency action. Overall, this has created a patchwork of information and regulation across U.S. jurisdictions.

ATSDR's new report, developed as part of its statutory role in researching health effects of toxic substances under CERCLA section 104(i), 42 U.S.C. § 9604(i), now offers new estimated MRLs for oral ingestion of PFOA, PFOS, perfluorohexane sulfonic acid (PFHxS), and perfluorononanoic acid (PFNA). These recommendations are intended to serve as screening tools rather than cleanup standards.[3] ATSDR set reference doses of: 3×10-6 mg/kg/day for PFOA; 2×10-6 mg/kg/day for PFOS; 2×10-5 mg/kg/day for PFHxS; and 3×10-6 mg/kg/day for PFNA. The reference doses for PFOA and PFOS are, respectively, 7 and 10 times more stringent than the reference doses used to calculate the 2016 health advisory level of 70 ppt, while U.S. E.P.A. had not set any reference dose for PFHxS and PFNA.

Given the unsettled status of PFAS regulation to date, these MRLs have the potential to spur debate on all ends of the spectrum. In a state like Michigan, which has developed its own drinking water standards for PFAS chemicals that are in some cases based on reference doses even lower than those in the ATSDR report,[4] the question becomes whether the state will adopt differing federal values that it may see as less stringent. Conversely, a state like Ohio that has utilized the 70 ppt health advisory level will need to consider how to respond to this new research. A range of stakeholders will have to...

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